

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ryan Meltzer	Team: Team # 5	CCRB Case #: 200715224	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/16/2007 8:30 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 4/16/2009	EO SOL 4/16/2009	
Date/Time CV Reported Thu, 10/18/2007 4:47 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/18/2007 4:47 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SSA Joseph Jette	04749	921442	PSA 2
2. SGT Edward Babington	93228	932283	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Shawn Nordenschild	24491	928873	PSA 2
2. POM Adam Mclawhorn	19828	933004	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edward Babington	Abuse: Sgt. Edward Babington entered § 87(2)(b)	§ 87(2)(b)
B.SGT Edward Babington	Abuse: Sgt. Edward Babington searched § 87(2)(b)	§ 87(2)(b)
C.SSA Joseph Jette	Abuse: SSA Joseph Jette searched § 87(2)(b)	§ 87(2)(b)
D.SSA Joseph Jette	Abuse: SSA Joseph Jette entered § 87(2)(b)	§ 87(2)(b)

Synopsis

On October 16, 2007 at approximately 8:30 PM, SSA Joseph Jette, Sgt. Edward Babington, and PO Adam McLawhorn of PSA 2 traveled to the home of § 87(2)(b) located at § 87(2)(b) in Brooklyn. The officers spoke briefly with § 87(2)(b) claiming that they had received a report of a possibly loaded firearm in his bedroom. § 87(2)(b) denied any knowledge of the firearm in question, and he refused the officers entry into his home. Nevertheless, SSA Jette and Sgt. Babington entered his apartment (**Allegations A and B**). Once inside of the apartment, the officers encountered § 87(2)(b)'s mother, § 87(2)(b) who also reportedly declined to consent to a search of the premises. After some conversation with the officers, § 87(2)(b) and § 87(2)(b) consented to a search of § 87(2)(b)'s bedroom, and Sgt. Babington—and allegedly SSA Jette—performed this search. Afterwards, § 87(2)(b) and § 87(2)(b) alleged, SSA Jette and Sgt. Babington searched certain rooms in the apartment to which they had explicitly denied the officers access (**Allegations C and D**).

§ 87(2)(g)

This complaint was originally assigned to Inv. David Coyle. It was reassigned to Inv. Ryan Meltzer in September 2008, following Inv. Coyle's departure from the agency.

Summary of Complaint

§ 87(2)(b) called the CCRB to file this complaint on October 18, 2007 (Encl. 6A-D). § 87(2)(b) assisted in the registration of this complaint by verbally providing § 87(2)(b) with details about the subject officers during this phone call. § 87(2)(b) and § 87(2)(b) were subsequently interviewed at the CCRB on November 5, 2007.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on November 5, 2007 (Encl. 7A-F). § 87(2)(b) is a § 87(2)(b) year-old Hispanic male, 5'4", 138 lbs., with brown hair and brown eyes. § 87(2)(b)

On October 16 2007 at approximately 8:30 PM, § 87(2)(b) was inside of his residence, § 87(2)(b) received a text message from his friend § 87(2)(b) (last name unknown), who lives at § 87(2)(b) asking him to meet her in the hallway outside of his apartment in order to lend her five dollars. § 87(2)(b) walked into the hallway and waited for § 87(2)(b). As he stood in the hall, he noticed four plainclothes officers exit the elevator at the end of the hall. Two of the officers told § 87(2)(b) that they wanted to talk to him, and they insisted that § 87(2)(b) already knew what they were talking about. § 87(2)(b) described the first officer as a white male, 6'4"-6'5", 180 lbs., with blue/hazel eyes and a similar complexion to § 87(2)(b) and he described the second officer as a white male, 5'9", 160-170 lbs., in his late 30s or early 40s, with blue eyes. The CCRB identified the first officer as Sgt. Edward Babington, and the second officer as SSA Joseph Jette, both of PSA 2. SSA Jette at one point indicated to § 87(2)(b) that he was in charge, and he displayed a silver badge. Sgt. Babington and SSA Jette told § 87(2)(b) that "an incident" had occurred earlier. § 87(2)(b) had no knowledge of the incident to which the officers were referring. Sgt. Babington and SSA Jette informed § 87(2)(b) that somebody had told them that he had a gun inside of his apartment, and the officers stated that they wanted to search § 87(2)(b)'s home. § 87(2)(b) asked Sgt. Babington and SSA Jette whether they had a search warrant. The officers responded that they did not have a search warrant, but they intended to get one. § 87(2)(b) told the officers that they could not enter his house, but § 87(2)(b) had left the front door to the apartment open, and Sgt. Babington and SSA Jette walked directly into the residence.

When Sgt. Babington and SSA Jette entered the apartment, they encountered § 87(2)(b)'s mother, § 87(2)(b). § 87(2)(b) remained in the hallway with the other two officers. He described the third

officer as a white male, 5'8", 210 lbs.; and he described the fourth officer as a Hispanic male, 6'4", 190 lbs. The investigation determined that only three officers were present for this incident—SSA Jette, Sgt. Babington, and PO McLawhorn—and therefore could not determine whether PO McLawhorn was the third or the fourth officer in § 87(2)(b)'s account. The third and fourth officers accused § 87(2)(b) of possessing a firearm because he was “lying” and “giving [the officers] attitude.” § 87(2)(b) told the officers that there was no gun in his home. During this time, SSA Jette and Sgt. Babington repeatedly exited § 87(2)(b)'s apartment to speak with the third and fourth officers. At some point, § 87(2)(b) came downstairs and stood with § 87(2)(b) and the third and fourth officers in the hallway outside of Apt. § 87(2)(b).

After about 40 minutes, SSA Jette and Sgt. Babington walked into the hallway and asked § 87(2)(b) for permission to search his room. § 87(2)(b) and the third and fourth officers then entered the apartment. § 87(2)(b) asked § 87(2)(b) whether he wanted to let the officers into his room, as they evidently were not leaving. § 87(2)(b) consented to a search of his bedroom. SSA Jette and Sgt. McLawhorn subsequently entered § 87(2)(b)'s room and performed an extensive search, looking underneath § 87(2)(b)'s mattress, and in his closets and drawers. Ten minutes after SSA Jette and Sgt. McLawhorn began searching § 87(2)(b)'s room, two more officers arrived. § 87(2)(b) described the fifth officer as a white male, 6'5"-6'6", slim, with blue eyes, and he described the sixth officer as a white male. As discussed above, the CCRB could not conclusively determine the identities of the officers who § 87(2)(b) identified as the fifth and sixth officers. The search of § 87(2)(b)'s room was conducted mainly by the third, fourth, and fifth officers, but all of the officers were entering and exiting the room during the search. During this time, the officers were talking on the radio and instructing officers to stay underneath the bedroom window. While the officers searched § 87(2)(b)'s room, § 87(2)(b) and § 87(2)(b) were in § 87(2)(b)'s bedroom, § 87(2)(b) was in her bedroom, and § 87(2)(b) was in the living room.

§ 87(2)(b) and § 87(2)(b) both told the officers that they could not search the bedroom of § 87(2)(b)'s brother—§ 87(2)(b) who was away at college at the time—and § 87(2)(b) specifically asked the officers to leave the premises. The officers replied that they needed to search the house, and they maintained that they were not going to leave without searching the entire house. The fourth and fifth officers searched § 87(2)(b)'s bedroom. The officers repeatedly asked § 87(2)(b) and § 87(2)(b) for their consent to search the rest of the apartment, but § 87(2)(b) and § 87(2)(b) did not grant consent.

At some point, the officers left § 87(2)(b) and § 87(2)(b) alone in § 87(2)(b)'s room. § 87(2)(b) exited the apartment and walked to the ninth floor of the building, and the third officer brought him back up to the § 87(2)(b) floor hallway. The third, fourth, fifth, and sixth officers stood in the hallway with § 87(2)(b) while the first two officers remained inside of Apt. § 87(2)(b). While the men stood in the hallway, the elevator came, and § 87(2)(b) entered the elevator. The officers were upset that § 87(2)(b) was leaving, but SSA Jette said to let him go. § 87(2)(b) estimated that it took the officers approximately one hour to leave his apartment, and he estimated that the entire encounter lasted one hour and forty-five minutes.

§ 87(2)(b) was unaware of why the officers suspected him of possessing a firearm. His friend, § 87(2)(b) was arrested on October 16, 2007, six or seven hours prior to the officers' arrival at § 87(2)(b)'s home, but § 87(2)(b) did not know why § 87(2)(b) was arrested, nor did he know whether this arrest had any connection to the officers' trip to his home.

On May 12, 2008, § 87(2)(b) viewed a 15-officer photo array at the CCRB, consisting of officers matching the physical descriptions provided by the complainants (Encl. 8A-Q). In this array, Photo #2 was PO Clive Thomas, Photo #10 was PO Shawn Nordenschild, and Photo #14 was PO Katrina Forrester. Photo #1, Photos #3-9, Photos #11-13, and Photo #15 were “filler” officers. § 87(2)(b) did not recognize the officers in Photos #1-8. He stated that the officer in Photo #9 could have been the officer that searched his room. § 87(2)(b) identified the officer in Photo #10 as the officer who spoke with his grandmother in the living room. He did not recognize the officers in Photos #11-13 and Photo #15. He stated that he has seen the officer in Photo #14 in his building, but she was not present for this incident.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on November 5, 2007 (Encl. 9A-F). § 87(2)(b) is § 87(2)(b)-old Hispanic female, 5'2", 142 lbs., with brown hair and brown eyes. § 87(2)(b)

On the evening of October 16, 2007, § 87(2)(b) was inside of her residence, § 87(2)(b). She was accompanied by her son, § 87(2)(b) and her mother, § 87(2)(b). No other civilians had been inside of the apartment on this date. § 87(2)(b) stated that § 87(2)(b) has no criminal record, and he has never possessed a gun, to the best of her knowledge.

At approximately 8:30 PM, § 87(2)(b)'s friend § 87(2) (last name unknown) called § 87(2)(b) to ask to borrow five dollars, and § 87(2)(b) walked back and forth into the hallway outside of Apt. § 87(2)(b) to meet her. While § 87(2)(b) was in the hallway, § 87(2)(b) heard a sound that drew her towards the front of the apartment. There, § 87(2)(b) noticed a plainclothes officer standing in the living room. § 87(2)(b) described this officer as a white male, 5'6", skinny, with blond hair and blue eyes. The CCRB identified this officer as SSA Jette. § 87(2)(b) was in the kitchen at this time.

§ 87(2)(b) asked SSA Jette, "What are you doing here?" SSA Jette replied that he had been told that § 87(2)(b) was in possession of a firearm. § 87(2)(b) challenged the basis of this report, and she asked SSA Jette whether he had a search warrant. A second plainclothes officer entered the apartment behind SSA Jette. § 87(2)(b) described the second officer as a white male, 5'5", husky, with blue eyes and brown hair. The CCRB identified this officer as Sgt. Babington. SSA Jette and Sgt. Babington began speaking about a search warrant. SSA Jette and Sgt. Babington stated that they needed to search § 87(2)(b)'s bedroom, and they said that if they were allowed to search § 87(2)(b)'s room, they would leave the apartment. § 87(2)(b) walked into the hallway outside of the apartment and looked at § 87(2)(b). § 87(2)(b) nodded his head as though to suggest that there was nothing that they could do, and § 87(2)(b) waved her hands to the officers to indicate that they could search § 87(2)(b)'s room. In response, SSA Jette and Sgt. Babington re-entered the apartment and walked to § 87(2)(b)'s room, and § 87(2)(b) entered the apartment with two additional officers who had been standing with him in the hallway. § 87(2)(b) described the third officer as a white male, 6'4", with a muscular build, blue eyes, and brown hair; and she described the fourth officer as a white male. As above, the investigation determined that only three officers were present for this incident—SSA Jette, Sgt. Babington, and PO McLawhorn—and therefore could not ascertain whether PO McLawhorn was the third or the fourth officer in § 87(2)(b)'s account.

In § 87(2)(b)'s bedroom, SSA Jette and Sgt. Babington searched § 87(2)(b)'s closets, § 87(2)(b)'s sneakers, and a crib inside of the room. § 87(2)(b) was inside of his bedroom with the officers. § 87(2)(b) left at one point, and she heard § 87(2)(b) say, "What the fuck?" or "Fuck this." She re-entered the bedroom and observed the third officer making a physical gesture as though he intended to strike § 87(2)(b). He raised his arms up and thrust his chest forward. Ultimately, this officer did not strike § 87(2)(b).

§ 87(2)(b) reminded the officers that they had said that if they were allowed to search § 87(2)(b)'s room, they would leave; in addition, she told the officers that they were not permitted to search any other rooms. One of the officers responded that if § 87(2)(b) did not permit them to search other rooms, they would be back at the residence the next day with guns, and they would forcibly enter the premises. § 87(2)(b) who speaks very little English, repeatedly asked the officers when they were leaving, and one of the officers tried to calm § 87(2)(b), § 87(2) and her sister § 87(2) (last name unknown), § 87(2)(b)'s girlfriend, were also present in the apartment, and the officers instructed them to leave.

While the officers were inside of the apartment, § 87(2)(b) called her brother, who lives in § 87(2)(b). § 87(2)(b) asked her brother to tell the officers to leave, but she herself ultimately told the officers to leave. The officers did not comply.

A fifth and a sixth officer, both white males with brown hair, came to the apartment at a later time and searched the bedroom of § 87(2)(b)'s other son, § 87(2)(b). These two officers had not participated in the search of § 87(2)(b)'s bedroom. § 87(2)(b) told the officers that they could not search § 87(2)(b) bedroom, though she was not sure whether § 87(2)(b) consented to this particular search. The fifth and sixth officers looked through § 87(2)(b) dresser and rifled through his clothing.

While inside of the apartment, the third officer entered and searched the bathroom. The officers never requested consent to search the bathroom. § 87(2)(b) also noticed an officer inside of § 87(2)(b)'s bedroom at one point, though she could not recall which officer this was. She noted that § 87(2)(b)'s bedroom door had been open before the officers arrived at the residence.

At one point, § 87(2)(b) left the apartment. At another point, § 87(2)(b) looked out of the window and noticed two plainclothes officers—a female and a male—standing outside of the building, looking up.

After the officers left, SSA Jette returned to the apartment and knocked on the front door. SSA Jette told § 87(2)(b) to remember that the officers could be back to forcibly enter the apartment and search the premises. § 87(2)(b) countered that she had nothing to hide.

On May 12, 2008, § 87(2)(b) viewed a 15-officer photo array at the CCRB, consisting of officers matching the physical descriptions provided by the complainants (Encl. 10A-Q). In this array, Photo #1 was PO Katrina Forrester, Photo #7 was PO Shawn Nordenschild, and Photo #14 was PO Clive Thomas. Photos #2-6, #8-13, and #15 were "filler" officers. § 87(2)(b) did not recognize the officers in Photos #1-7, Photo

#9, or Photos #11-15. § 87(2)(b) remarked that the officer in Photo #7 resembled one of the officers who searched the apartment, but she was not certain of this officer's involvement. § 87(2)(b) stated that the officer in Photo #8 looked like the officer who wanted to strike § 87(2)(b). She noted that the officer in Photo #10 resembled the partner of the officer who wanted to strike § 87(2)(b).

Results of Investigation

Attempts to Contact and Interview Additional Civilian Witnesses

In October 2007, when the CCRB first received this complaint, Inv. Coyle attempted to schedule § 87(2)(b) for interview at the agency. However, § 87(2)(b) specifically requested that the CCRB not contact her mother, due to the state of the latter's physical and mental health. Between January 2008 and February 2008, Inv. Coyle independently contacted § 87(2)(b) and § 87(2)(b) in an effort to arrange a phone interview with § 87(2)(b) but § 87(2)(b) could only advise Inv. Coyle to contact § 87(2)(b) to this end, and § 87(2)(b) reiterated that she did not want to involve her mother in this CCRB investigation. Finally, in September 2008, Inv. Meltzer contacted § 87(2)(b) one final time to discuss the possibility of conducting an interview with § 87(2)(b). At this time, § 87(2)(b) stated that her mother was not capable of providing a coherent statement to the CCRB, either at the agency or at a mutually agreeable location—§ 87(2)(b) is § 87(2)(b) old, she suffers from diabetes and hypertension, and she is struggling with emphysema. Accordingly, § 87(2)(b) was not interviewed in the course of this investigation.

With respect to § 87(2)(b)'s friends § 87(2) and § 87(2)(b) who he identified as witnesses to this incident, § 87(2)(b) declined to provide the CCRB with their last names and/or telephone numbers during his CCRB interview. Numerous subsequent phone calls to § 87(2)(b) and § 87(2)(b) between January 2008 and September 2008 yielded no such information. Ultimately, § 87(2)(b) was only able to provide § 87(2)'s address—§ 87(2)(b). However, searches of various internet databases, as well as the Cole Directory, were unable to verify § 87(2)'s residence, or to locate any telephone number(s) corresponding to this address. Nevertheless, Inv. Coyle sent two letters to § 87(2) between February and July 2008, and he specifically requested that § 87(2)(b) provide § 87(2) and § 87(2) with his telephone number so that he could speak with them about the incident under investigation. As of December 2008, neither woman has attempted to contact the CCRB.

Officer Statements

Sgt. Edward Babington

Memo Book

Sgt. Babington did not have any memo book entries documenting his visit to § 87(2)(b) on October 16, 2007. § 87(2)(e), § 87(2)(f)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

CCRB Testimony

Sgt. Babington was interviewed at the CCRB on October 2, 2008 (Encl. 14A-D). Sgt. Babington is a § 87(2)(b)-old white male, 6'3", 235 lbs., with brown hair and green eyes. Sgt. Babington worked a tour of 5:30 PM-2:05 AM on October 16, 2007. He was assigned to Anti-Crime duty with SSA Joseph Jette and PO Adam McLawhorn. The officers were assigned to an unmarked vehicle (#9630), most likely a Crown Victoria.

On October 16, 2007, at the beginning of his tour, § 87(2)(e), § 87(2)(f)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(e), § 87(2)(f)

Sgt. Babington then conducted preliminary research on § 87(2)(b) by running his name and the address of the Langston Hughes NYCHA Development on the NYPD database. He confirmed that § 87(2)(b) lived at § 87(2)(b) and he located an unmarked arrest photograph of § 87(2)(b) § 87(2)(e), § 87(2)(f)

§ 87(2)(e) Sgt. Babington, SSA Jette and PO McLawhorn proceeded to § 87(2)(b) § 87(2)(b). The officers' intention was to speak with § 87(2)(b) to ascertain whether he was in possession of a firearm. Sgt. Babington could not say whether he had probable cause to arrest § 87(2)(b) indicating that this decision would have been based on what evidence was located. When they arrived at § 87(2)(b) the officers exited the elevator onto the § 87(2)(b) floor of the building. The officers observed § 87(2)(b) in the hallway of the § 87(2)(b) floor, standing outside of his apartment with a female (identified by the CCRB as § 87(2)(b)). The officers—who all had their shields around their necks—approached § 87(2)(b) and § 87(2)(b) who were talking, and Sgt. Babington identified himself to § 87(2)(b) as a police officer. Sgt. Babington described § 87(2)(b) as being “nonchalant,” and he noted that he did not seem interested in speaking with them. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) The officers indicated that they wanted to make sure that there was no gun in his house; and if there was a gun, they would remove it so that no one would get hurt. § 87(2)(b) denied that he was in possession of a gun and replied that he had just returned home from work. The officers asked § 87(2)(b) if they could speak with him inside of the apartment in order to protect his privacy, but § 87(2)(b) replied that he was apprehensive and wanted to remain in the hallway. § 87(2)(b) seemed to be annoyed, and he was not particularly cooperative with the officers. The officers then asked § 87(2)(b) whether anybody else was home, and he informed them that his mother, § 87(2)(b) was in the apartment.

Sgt. Babington knocked on the door to § 87(2)(b)'s apartment, and he spoke with § 87(2)(b) at the door. After explaining to § 87(2)(b) why they were at her home, the officers said that they would like to enter the apartment to speak to her. § 87(2)(b) invited the officers into the apartment. Sgt. Babington and SSA Jette entered, while PO McLawhorn remained outside in the hallway with § 87(2)(b). When Sgt. Babington and SSA Jette informed § 87(2)(b) of the reported firearm, § 87(2)(b) became apprehensive and concerned about the safety of children in the apartment. § 87(2)(b) informed the officers that she did not know what to do, and she asked to call a family member for advice. § 87(2)(b) called a male family member—a relative employed in law enforcement or city government—and passed the telephone to Sgt. Babington, who spoke with this individual about the situation. When the telephone was returned to § 87(2)(b) the family member told her that the search was not a big deal, and advised her that it would be in her best interest to allow the officers to conduct the search, due to the children in the apartment.

§ 87(2)(b) ended the phone call. Sgt. Babington told § 87(2)(b) that if she still had a problem, she could accompany the officers as they searched § 87(2)(b)'s bedroom. § 87(2)(b) agreed, and she led Sgt. Babington to § 87(2)(b)'s bedroom. The door to this room was open when the officers arrived. Sgt. Babington and § 87(2)(b) entered § 87(2)(b)'s bedroom. SSA Jette stayed in the hall immediately outside of the bedroom. No other officers entered the bedroom at any time. Sgt. Babington described § 87(2)(b)'s bed as comprising two mattresses atop a metal frame. Sgt. Babington lifted the top mattress approximately five feet, such that the entire top of the lower mattress was uncovered. He did not remove the mattress from the bed frame. § 87(2)(b) stood next to Sgt. Babington and observed as he lifted the mattress. When a search of the mattress yielded no gun, Sgt. Babington replaced the mattress. He did not search any other location in the room. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) Sgt. Babington and § 87(2)(b) were inside of the bedroom for approximately one minute. Neither Sgt. Babington nor SSA Jette entered any other rooms inside of the apartment. The officers were together for the entire time that they were inside of Apt. § 87(2)(b) with the exception of when Sgt. Babington entered § 87(2)(b)'s bedroom.

§ 87(2)(e), § 87(2)(f) When asked whether there were any other individuals in the apartment, Sgt. Babington stated that he was aware that an elderly

woman was in the apartment, but he was unsure where she was during his time in the residence. He never observed any children in the residence during his time inside of the apartment.

Sgt. Babington did not know what was happening in the hallway with § 87(2)(b) while he was inside of the apartment. He did not hear anything happening in the hallway during this time. The officers never called for additional units to respond to the location, and Sgt. Babington had no recollection of any additional officers being present. He described the incident as being “completely controlled” and free of any problems. Neither § 87(2)(b) nor § 87(2)(b) ever told the officers that they could not search anywhere inside of the apartment, and § 87(2)(b) never revoked her consent to search or asked the officers to leave the premises.

As the officers exited the apartment, § 87(2)(b) became upset, saying, “You guys always come and bother us. You need to stop harassing people.” § 87(2)(b) asked Sgt. Babington for his name, so Sgt. Babington informed her that this information was documented on a piece of paper inside of the apartment. However, because § 87(2)(b) was not involved in the incident, the officers did not concern themselves with her, and they walked towards the elevator. Sgt. Babington had not spoken with § 87(2)(b) before this time, and this was the first time that he heard her speaking. In addition, this was the first point at which the officers encountered any resistance to their actions; although § 87(2)(b) seemed “annoyed,” he did not obstruct their efforts. The officers left § 87(2)(b) and resumed patrol.

PO Adam McLawhorn

Memo Book

PO McLawhorn noted in his memo book that he, Sgt. Babington, and SSA Jette performed a vertical patrol at § 87(2)(b) at 7:00 PM on October 16, 2007, and they corrected a non-crime and resumed patrol at 7:30 PM. (Encl. 15A-C)

CCRB Testimony

PO McLawhorn was interviewed at the CCRB on October 8, 2008 (Encl. 16A-C). PO McLawhorn is a § 87(2)(b)-old white male, 6’2”, 205 lbs., with brown hair and blue eyes. PO McLawhorn worked a tour of 5:30 PM-2:05 AM on October 17, 2007. He was assigned to Anti-Crime Duty with Sgt. Edward Babington and SSA Joseph Jette. The officers were assigned to an unmarked vehicle (#9637), which PO McLawhorn described as a black or green Chevrolet Impala.

§ 87(2)(g)

§ 87(2)(e), § 87(2)(f)

his team frequently conducts vertical patrols of this building; and he stated that his team performed a vertical patrol of this building on this date, prior to speaking with § 87(2)(b)

With respect to the officers’ actions at § 87(2)(b) PO McLawhorn could not recall which officer primarily interacted with § 87(2)(b) he stated that when the officers explained the reason for their visit, § 87(2)(b) became nervous and fidgety, and appeared to be shocked; he stated that § 87(2)(b) consented to a search of his apartment, but he could not recall the nature of the conversation between § 87(2)(b) and the officers, nor could he recall what exactly § 87(2)(b) said; he had no recollection of any discussion of consent to search the apartment with § 87(2)(b) he did not have any contact with § 87(2)(b) and did not know whether Sgt. Babington and SSA Jette ever explained their actions; he could not recall whether the officers left the door open or closed when they entered; he said that as he spoke with § 87(2)(b)—he could not recall what they discussed—§ 87(2)(b) appeared to grow increasingly nervous and panicked, and he spoke rapidly; and he could not recall whether the officers had any conversation with § 87(2)(b) or § 87(2)(b) after SSA Jette and Sgt. Babington exited the apartment.

SSA Joseph Jette

Memo Book

SSA Jette did not prepare any memo book entries relevant to this incident (Encl. 17A-B).

CCRB Testimony

SSA Jette was interviewed at the CCRB on November 20, 2008 (Encl. 18A-C). SSA Jette is a § 87(2)(b) year-old white male, 5'11", 180 lbs., with blond hair and blue eyes.

SSA Jette worked a tour of 5:26 PM-2:10 AM on October 16, 2007. He was supervising an Anti-Crime team that included Sgt. Edward Babington and PO Adam McLawhorn. SSA Jette was dressed in plainclothes, and his team was assigned to an unmarked dark grey Chevrolet Impala (#9637).

§ 87(2)(g)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) he was not familiar with § 87(2)(b)—his criminal conviction history, his prior arrests, etc.—prior to this incident, but he was familiar with § 87(2)(b) which he characterized as a “trouble” location; he said that his intention in traveling to § 87(2)(b) was “to remove a loaded firearm from § 87(2)(b) s] apartment”; he said that he did not consider applying for a search warrant because, given the nature of the information his team had received, it was not feasible to get a search warrant—the firearm would likely have been moved; and he described his actions on October 16, 2007 as part of an investigation into a report of a loaded firearm—he did not have probable cause for an arrest.

With respect to the officers’ actions at § 87(2)(b) SSA Jette stated that when the officers arrived at the location, they immediately asked § 87(2)(b) whether anybody else was home, indicating that they preferred to speak with another family member; he stated that § 87(2)(b) became defensive, and he told the officers not to knock on his door, as there was nobody home; he later stated (in response to further questioning) that he and Sgt. Babington spoke with § 87(2)(b) for 1-1.5 minutes before they knocked on his apartment door, and that during this time, § 87(2)(b) was largely uncooperative; he stated that, prior to entering the residence, he and Sgt. Babington never mentioned anything to § 87(2)(b) regarding the report of a firearm in his home; he stated that § 87(2)(b) was free to leave while the officers were inside of his apartment; he denied that Sgt. Babington ever spoke with § 87(2)(b) s relative on the telephone while the officers were inside of Apt. § 87(2)(b) he stated that he was unable to see what Sgt. Babington was doing inside of § 87(2)(b) s bedroom; he stated that Sgt. Babington was only inside of § 87(2)(b) s bedroom for approximately ten seconds, during which time § 87(2)(b) did not say anything; he stated that after the search was completed, both he and Sgt. Babington provided § 87(2)(b) with their names and telephone numbers and told her to call them if she found a weapon; he estimated that he and Sgt. Babington were inside of the apartment for approximately 15 minutes; he stated that he only saw § 87(2)(b) s girlfriend once he and Sgt. Babington exited the apartment, after the search was completed; he stated that as soon as the officers exited § 87(2)(b) s apartment, § 87(2)(b) s girlfriend began to scream, “You’re not allowed in the apartment!” and § 87(2)(b) joined in, complaining that the officers were not allowed in his apartment and claiming that the officers had not identified themselves; and he stated that § 87(2)(b) and his girlfriend remained loud and irate when the officers left the premises.

PO Shawn Nordenschild

Memo Book

PO Nordenschild noted in his memo book that he made an arrest at 2:52 PM on October 16, 2007, and he was in the PSA 2 station house from 3:00 PM until 10:40 PM (Encl. 11A-C).

CCRB Testimony

PO Nordenschild was interviewed at the CCRB on June 5, 2008 (Encl. 12A-B). PO Nordenschild is a § 87(2)(b) -old white male, 6'0", 180lbs., with blond hair and blue eyes.

PO Nordenschild worked a tour of 12:30PM-11:05PM on October 16, 2007. He was assigned to the Domestic Violence Unit with PO Kaylish Lopez. Both officers were dressed in uniform, and they were assigned to a marked patrol car (#9773).

PO Nordenschild had no independent recollection of a visit to § 87(2)(b) in Brooklyn, and he stated that he was not present for the incident under investigation. PO Nordenschild pointed out that he and his partner were at the station house, processing an arrest, at the time of this incident. When shown photographs of § 87(2)(b) and § 87(2)(b) PO Nordenschild stated that he did not recognize either individual.

Communications Records

Sprint Report

A request for any Sprint report(s) generated on October 16, 2007 between 6:00 and 8:00 PM yielded only one Sprint report (Job #T08476), which pertains to a vertical patrol of § 87(2)(b) performed by the officers in unit 73HA150 at 4:13 PM. During this patrol, the officers evidently conducted warrant checks on a “§ 87(2)(b)” and a “§ 87(2)(b),” and they registered an arrest at 4:35 PM (Encl. 21A-B). § 87(2)(g)

NYPD Documents

BADS Arrest Index

The BADS Arrest Index for the 73rd Precinct for October 16, 2007 indicates that no arrests directly related to this incident were made at § 87(2)(b) on this date (Encl. 19). It does, however, indicate that PO Nordenschild arrested § 87(2)(b).

Arrest Report: § 87(2)(b)

§ 87(2)(b) arrest report (§ 87(2)(b)) confirms that PO Nordenschild arrested § 87(2)(b) for an open UF-61 (§ 87(2)(b)) at 2:52 PM on October 16, 2007 (Encl. 20).

PSA 2 Roll Call

The PSA 2 Roll Call for October 16, 2007 confirms that SSA Jette, Sgt. Babington, and PO McLawhorn were assigned to the same anti-crime team for a tour of 5:30 PM-2:05 AM, and they were using unmarked patrol car #9637. It also confirms that PO Nordenschild was assigned to the domestic violence unit with PO Lopez for a tour of 2:00 PM-10:35 PM, and he was using marked patrol car #9773 (Encl. 22A-K).

PSA 2 Command Log

The PSA 2 Command Log includes one entry of relevance: At 3:00 PM, PO Nordenschild registered the arrest of § 87(2)(b). He indicated that § 87(2)(b) was charged with § 87(2)(b). § 87(2)(e), § 87(2)(f)

Stop and Frisk Log

The Stop and Frisk Log for the 73rd Precinct for October 16, 2007 does not include any Stop and Frisk Reports relevant to this complaint. (Encl. 24).

New York State Police Documents

Records of Warrant Check

A subpoena for records of a warrant check performed on § 87(2)(b) on October 16, 2007 was returned from the NYSPD with a letter stating that the Division possesses no such records (Encl. 29A-C).

Criminal Conviction Histories of Civilians

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A search of the NYPD's Booking/Arraignment/Disposition Inquiry System on December 1, 2008 determined that § 87(2)(b) has not been arrested between 1980 and the present (Encl. 26).

In his ten years' tenure with the NYPD, SSA Jette has never been the subject of a substantiated CCRB allegation (Encl. 2). Likewise, in his five years' tenure with the NYPD, Sgt. Babington has never been the subject of a substantiated CCRB allegation (Encl. 3).

The present case comprises the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) (Encl. 4-5).

[illegible]

§ 87(2)(e), § 87(2)(f)

It is undisputed that at approximately 6:30 or 7:00 PM, SSA Jette, Sgt. Babington, and PO McLawhorn traveled to § 87(2)(b) and encountered § 87(2)(b) in the hallway outside of his apartment. It is undisputed that the officers spoke briefly with § 87(2)(b) before initiating a conversation with § 87(2)(b) at the entrance to the apartment. It is undisputed that SSA Jette and Sgt. Babington entered § 87(2)(b)'s residence, while PO McLawhorn remained outside with § 87(2)(b). It is undisputed that § 87(2)(b) placed a phone call to a relative while speaking with the officers inside of the apartment. Finally, it is undisputed that either § 87(2)(b) or § 87(2)(b) consented to a search of § 87(2)(b)'s bedroom, and that Sgt. Babington performed this search.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] § 87(2)(b) [REDACTED] § 87(2)(b)

[REDACTED]'s contention that the officers searched [REDACTED] § 87(2)(b)'s bedroom as well as a bathroom inside of the apartment). [REDACTED] § 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g), § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that the officers informed him of a report of a firearm in his possession, and they expressed their intention of searching his residence. By § 87(2)(b)'s account, when he questioned the officers' authority to perform such a search, they immediately walked into his apartment and encountered § 87(2)(b) inside. § 87(2)(b) corroborated the essential fact pattern of this narrative, stating that a commotion drew her to the front of the apartment, where she observed a plainclothes police officer standing in the living room. In contrast, SSA Jette, Sgt. Babington, and PO McLawhorn all testified that after speaking briefly with § 87(2)(b) and determining that he was in some way uncooperative—their statements varied regarding the extent of their conversation with § 87(2)(b) as well as the nature of § 87(2)(b)'s demeanor—they knocked on the closed front door and were met by § 87(2)(b) who invited them inside.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) and § 87(2)(b) both alleged that the officers extensively searched § 87(2)(b)'s bedroom, in addition to searching other rooms in the apartment to which § 87(2)(b) had explicitly denied them access—notably, the bedroom of § 87(2)(b), § 87(2)(b)'s brother. In addition, they alleged that they both chided the officers for not leaving the residence after searching § 87(2)(b)'s bedroom, as they had reportedly agreed to do. In contrast, SSA Jette and Sgt. Babington denied that they ever entered any rooms in the apartment beyond the living room and § 87(2)(b)'s bedroom; and Sgt. Babington stated that once inside of § 87(2)(b)'s bedroom, he only lifted the mattress off of the bed frame, § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f) Both officers testified that Sgt. Babington was only inside of § 87(2)(b)'s bedroom for an extremely brief period of time (between ten seconds and one minute), § 87(2)(g)

Both officers further stated that they exited the residence immediately after Sgt. Babington completed this limited search, and they denied even performing a brief security sweep of the premises. § 87(2)(g)

§ 87(2)(g), § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

Allegation A: Sgt. Edward Babington entered § 87(2)(b)

Allegation B: SSA Joseph Jette entered § 87(2)(b)

§ 87(2)(g), § 87(2)(e), § 87(2)(f)

As per Kamins, New York courts have held that “the fact that a police officer threatens a defendant or a family member with adverse legal consequences does not negate the voluntariness of his consent, *especially* where the officer has a legal basis to carry out his threats.” For example, “if a police officer threatens a defendant that the officer will obtain a search warrant if the defendant does not consent to a search, the consent may be valid based on the defendant’s knowing and intelligent decision to accept the consequences of a consent search, rather than face the consequences of a wider search pursuant to a warrant” (Encl. 1B-C). Moreover, New York courts have recognized the authority of a parent to consent to an entry and/or search of a shared family dwelling, based on the “superior right in parents to keep the family home free of criminal activity” (Encl. 1D).

§ 87(2)(g)

Allegation C: Sgt. Edward Babington searched § 87(2)(b)

Allegation D: SSA Joseph Jette searched § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: